INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	7
Reasons for granting the writs	8
Conclusion	21

CITATIONS

Cases:

Aetna Life Ins. Co. v. *Hagemyer*, 53 F. 2d 636	14
American Medical Ass'n v. *United States*, 130 F. 2d 233, affirmed, 317 U. S. 519	17
American Tobacco Company v. *United States*, 147 F. 2d 93, affirmed, 328 U. S. 781	12
Bozza v. *United States*, 330 U. S. 160	13
Burton v. *United States*, 202 U. S. 344	13
Carter v. *Atlanta & St. Andrews Bay R. Co.*, No. 23, this Term, decided December 19, 1949	16
Crumpton v. *United States*, 138 U. S. 361	13
Curley v. *United States*, 160 F. 2d 229, certiorari denied, 331 U. S. 837	15
Dunlop v. *United States*, 165 U. S. 486	20
Dunn v. *United States*, 284 U. S. 390	17
Eastern States Lumber Assn. v. *United States*, 234 U. S. 600	11
Ellis v. *Union Pacific R. Co.*, 329 U. S. 649	13
Glasser v. *United States*, 315 U. S. 60	12
Gorin v. *United States*, 111 F. 2d 712, affirmed, 312 U. S. 19	12
Hardeman v. *United States*, 163 F. 2d 21	12
Interstate Circuit, Inc. v. *United States*, 306 U. S. 226	11
Leslie v. *United States*, 43 F. 2d 288	16
National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206	16
Nicola v. *United States*, 72 F. 2d 780	15
Roberts v. *United States*, 151 F. 2d 664	12
Scott v. *United States*, 145 F. 2d 405, certiorari denied, 323 U. S. 801	12, 14
Stilson v. *United States*, 250 U. S. 583	13
Tennant v. *Peoria & P. U. Ry. Co.*, 321 U. S. 29	13
United States v. *Becker*, 62 F. 2d 1007	15

Cases—Continued	Page
United States v. *Bruno*, 329 U. S. 207	13
United States v. *Dotterweich*, 320 U. S. 277	17
United States v. *General Motors Corp.*, 121 F. 2d 376, certiorari denied, 314 U. S. 618	17
United States v. *Johnson*, 319 U. S. 503	21
United States v. *Knight*, 336 U. S. 505	12
United States v. *Manton*, 107 F. 2d 834, certiorari denied, 309 U. S. 664	12
United States v. *Masonite Corp.*, 316 U. S. 265	11
United States v. *New York Great A. & P. Tea Co.*, 173 F. 2d 79	12
United States v. *Reginelli*, 133 F. 2d 595, certiorari denied, 318 U. S. 783	12, 14
United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150	20
United States v. *Valenti*, 134 F. 2d 362, certiorari denied, 319 U. S. 761	12, 15
Wilkerson v. *McCarthy*, 336 U, S. 53	16
Yoffe v. *United States*, 153 F. 2d 570	12, 15
Statutes:	
Act of Oct. 10, 1942, 56 Stat. 781	18
Sherman Act, Act of July 2, 1890, 26 Stat. 209, Sec. 1, as amended, 50 Stat. 693, 15 U. S. C. 1	3, 12
Miscellaneous:	
3 Wigmore, *Evidence* (3d Ed., 1940) § 897	14
7 Wigmore, *Evidence* (3d Ed., 1940) § 2034	14

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 592

UNITED STATES OF AMERICA, PETITIONER

v.

PEVELY DAIRY COMPANY

No. 593

UNITED STATES OF AMERICA, PETITIONER

v.

ST. LOUIS DAIRY COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General respectfully prays that writs of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above-entitled case on December 13, 1949.

OPINIONS BELOW

The opinion of the court of appeals (R. 650) is reported at 178 F. 2d 363. The opinion of the District Court for the Eastern District of Missouri on defendants' motions to dismiss the indictment is reported at 77 F. Supp. 853, and its opinion on

the motions of the corporate defendants for acquittal or a new trial is reported at 79 F. Supp. 12.

JURISDICTION

The judgments of the court of appeals were entered on December 13, 1949 (R. 663, 664). On January 12, 1950, the time within which to file a petition for writs of certiorari was extended by the Chief Justice to and including February 11, 1950. Motions to modify the judgments of the court of appeals were timely filed by respondents and were denied on January 26, 1950. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254.

QUESTIONS PRESENTED

1. Whether a charge of conspiracy to fix prices in violation of the Sherman Act may be sustained on proof of price discussions between responsible agents of two competing corporations followed in each instance by identical and practically simultaneous price changes, where the corporate agents deny that their discussions resulted in agreements to fix prices.

2. Whether a jury verdict of conviction may be set aside by a court of appeals if the evidence in the light most favorable to the Government supports the verdict.

3. Whether the presumption of correctness of a jury's verdict of conviction of a defendant is dis-

pelled or weakened by simultaneous, inconsistent verdicts of acquittal of other defendants.

4. Whether admission of evidence as to the ownership of a corporate defendant and the salaries paid certain defendants constituted prejudicial error.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. [15 U. S. C. 1.]

STATEMENT

Respondent dairies and certain of their officers and directors were indicted on February 25, 1948, for violation of Section 1 of the Sherman Act by engaging in a conspiracy from 1938 to 1948 to fix uniform and noncompetitive retail and wholesale prices for fluid milk in the St. Louis, Missouri, area in restraint of interstate commerce (R. 4). Upon a trial by jury respondents were convicted and the individual defendants were acquitted (R. 627–628). Motions by respondents for judgments of acquittal or a new trial were denied (R. 631, 634, 637), and respondents appealed.

The court of appeals, one judge dissenting, held the verdicts unsupported by the evidence and ordered a new trial (R. 650, 662).[1]

The principal evidence for and against respondents may be briefly summarized. The two respondent dairies together make a total of some 63% of the sales of fluid milk in the St. Louis area (Gov. Ex. 31, R. 267), and more than half of the milk sold by them is produced in Illinois and shipped into the St. Louis area (Gov. Ex. 30, R. 245). During the period covered by the indictment the record reveals no instance of price competition between the two respondents in respect of Grade A milk (R. 322–323, 481).[2] On the contrary, each time that one dairy changed its wholesale or retail prices the other dairy made a simultaneous identical change (nine occasions) or an identical change not more than one day later (five occasions) (Gov. Exs. 29 (R. 241) and 32 (R. 269)).[3]

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[1] One judge was also of the view that the activities involved did not involve or affect interstate commerce.

[2] Although this statement also holds true during the period of OPA controls, we except from consideration that period, from January 19, 1943, to June 19, 1946, since the price changes during that time were withdrawn from the jury as not constituting evidence in support of the charge. 79 F. Supp. 12, 20.

[3] In the cases where changes were not simultaneous it is of interest to note that there appears to have been almost without exception a regular alternation between the respondents in being the first to make a price change (R. 269, 546–547).

From 1939 until October 1941, when the Government instituted an investigation into milk practices in St. Louis which came to the attention of respondent St. Louis Dairy (R. 254), it was the custom of Gee, the sales manager of its milk division (R. 233) and Wasser, the sales manager and a director of respondent Pevely Dairy (R. 231), to confer prior to price changes by the dairies (R. 263–264). Gee testified that from August 7, 1939, through September 2, 1941, "probably each one [price change] was announced to the other. I couldn't recall who announced to who" (R. 262). Gee denied, however, that he had ever agreed to a price change (R. 256). Wasser also testified to the exchange of information as to contemplated price changes. He stated as his reason for communicating to Gee the contemplated price action of respondent Pevely Dairy that he "knew it was impossible for us to sell at a higher price than our competitor, and I wanted to tell him what our price was, what the increase was, hoping that their company would increase their price, too" (R. 229). He admitted that in each case the hope was realized but denied that he was ever assured that it would be (*ibid.*). Both Gee and Wasser testified that they advised their respective superiors of prospective price change information received from the other (R. 228, 250). However, Lide, President and General Manager of St. Louis Dairy and a defendant in the action, denied any contemporary knowledge of the Gee-Wasser price

conferences (R. 483) and denied making any agreement to fix prices of milk (R. 479).

Although it was testified that price conferences were discontinued after October 1941 (R. 234), the pattern of simultaneous or nearly simultaneous price changes continued.[4] And on at least two occasions in 1947 price changes by the two respondents were made effective on the same day and printed price lists embodying the new prices were ordered by each dairy prior to that day.[5]

[4] The evidence shows that the same pattern of identical prices and simultaneous price changes was carried over to the matter of quantity discounts which were to be allowed wholesale purchasers of milk and other dairy products. Each appellant issued elaborate quantity discount schedules effective on February 1, 1947, providing for rebates to be allowed purchasers who within a one-month period purchased certain quantities of milk and dairy products from the seller. The schedules were identical in every respect, including the number of points to be allowed for each unit of dairy products, the scale of rebates earned according to points purchased, the limitation of the period of computation to calendar months, the provision that each separate store or place of delivery shall be considered a separate unit, and the time for payment of the rebate (Gov. Exs. 27, 28, R. 222–226). Thus every element of the prices charged by respondents was identical and all changes, either in list prices or discounts, were made simultaneously.

[5] Thus price lists were ordered on the following dates for price changes to become effective simultaneously (Stipulation, R. 546–547):

Price lists ordered		New prices effective —both dairies
St. Louis	Pevely	
July 30, 1947 Sept. 11, 1947	July 25, 1947 Sept. 15, 1947	Aug. 1, 1947 Sept. 16, 1947

Apart from the testimony of the officers of respondent St. Louis Dairy denying the making of any agreements to fix prices, the evidence for respondents consisted in the main of economic data and expert testimony designed to demonstrate that each of the price changes here involved was justified and explained by economic factors and accounting methods common to the business of both dairies, and that where there is a standardized product, such as milk, the prices in a given market will tend to be uniform and price changes will be virtually simultaneous (R. 302–561).

SPECIFICATION OF ERRORS TO BE URGED

The court of appeals erred—

1. In holding, in effect, that a charge of conspiracy to fix prices in violation of the Sherman Act may not be sustained on undisputed evidence of price discussions between responsible agents of two competing corporations followed in each instance by identical and practically simultaneous price changes, where the corporate agents deny that their discussions resulted in agreements to fix prices.

2. In substituting its judgment for that of the jury in deciding what inferences should be drawn from the evidence and what evidence should be believed.

3. In holding, in effect, that a jury may not refuse to believe testimony of witnesses.

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4. In holding that the presumption of correctness usually attributed to the verdict of a jury is weakened by an inconsistency of verdicts with respect to different defendants.

5. In holding that the evidence did not sustain the verdicts of the jury.

6. In holding that there was reversible error in the admission of certain evidence.

7. In reversing the judgments of conviction.

REASONS FOR GRANTING THE WRITS

These cases present important questions in the administration of the Sherman Act and in the scope of review of jury verdicts in criminal cases.

1. In setting aside the jury's conviction of the respondents, the court below has in substance ruled as a matter of law that the pattern of concert of action by the respondents with respect to prices of milk does not constitute a conspiracy in violation of the Sherman Act. The effect of the decision below, if unreversed, would be to offer a ready device for the evasion of the antitrust laws.

The undisputed evidence favorable to the Government showed that respondent dairies have maintained identical prices, both wholesale and retail, for Grade A milk over a period of years; that all price changes made by the two dairies over a period of years, most of them increases, were made either simultaneously or within one day of each other; that prior to 1941 it was a regular

course of action for the sales representatives of the two dairies to discuss price changes to be made, with the hope and expectation that a price change made by one dairy would be followed by the other; that each dairy published elaborate and identical quantity discount schedules for wholesale purchasers, effective on February 1, 1947; and that in 1946 and 1947, there were instances in which each dairy ordered printed price lists containing identical changes in advance of a date on which both dairies put the price changes into effect (*supra,* pp. 4–6).

From the evidence, and on instructions accepted by the petitioners (R. 624) and which the court below conceded to be proper (R. 655), the jury evidently concluded that the respondents had conspired to fix the prices to be charged for Grade A milk, and it returned verdicts of guilty. In a careful opinion on motions for judgments of acquittal the district judge characterized this evidence as follows (79 F. Supp. 12, 17–18):

> One would be naive indeed to conclude, as defendants urge, that when a representative of one of the defendants initiated a conference with the other to discuss prices, under such circumstances as we set out, that the agent initiating the conference did so solely to tell his competitor's agent "We are going to raise our price on Grade A milk one and one-half cents commencing thirty-six hours hence. Goodbye." Such a message could have been transmitted by

telephone, by telegram, by an errand boy. But here the sales representatives of the two corporate defendants had to meet personally—one of the meetings was held in a public park. The meetings were prearranged.

* * * * *

Of all the dairies in St. Louis only tne two defendants could fathom with such minute exactitude as to date and amount when and in what amount the two defendants would make a price change. During the period when conferences were being held they synchronize precisely. During 1946 one day separates the price changes made by the defendants, with the defendants alternating in taking the initiative on price change. This practice ended with the year 1946. In 1947 the practice is again that of the period when representatives of each of the defendants were holding conferences on the subject. We think the comment of the court in *Davis* v. *United States,* 6 Cir., 107 F. 753, loc. cit. 755, is applicable:

"The evidence shows a detail of facts and circumstances in which the alleged conspirators are involved, separately or collectively, and which are clearly referable to a preconcert of the actors, and there is a moral probability that they would not have occurred as they did without such preconcert, that is sufficient if it satisfies the jury of the conspiracy beyond a reasonable doubt."

It seems abundantly clear that on the basis of the above evidence the jury was warranted in inferring concert of action to fix prices. The contrary decision of the court of appeals disregards, and we think is in irreconcilable conflict with, the repeated decisions of this Court that an express agreement is not an essential ingredient of a conspiracy to restrain trade—that a concert of action following a common understanding is enough. *United States* v. *Masonite Corp.*, 316 U. S. 265, 275; *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 226–227; *Eastern States Lumber Assn.* v. *United States*, 234 U. S. 600, 612. Competitors need no formal arrangements in order to fix prices. A meeting at which A says "I am going to raise my price 10 cents next week" and B says "I will too" has the same consequences—economic and legal—as one in which A and B expressly agree on a price to be charged. Manifestly in the first situation A may withdraw or change his announcement if B does not make a similar one. Or, more realistically, the price change which results from the interchange of information will be the product of a common understanding, whatever forms may be followed at the meeting. Certainly that is what occurred here. During the period (from 1939 to 1941) when price conferences were held there invariably resulted simultaneous or nearly simultaneous identical price changes (*supra*, pp. 4–5).

It seems clear that the provisions of Section 1 of the Sherman Act prohibiting conspiracies in restraint of trade would in many situations be converted into little more than a pious admonition if the instant decision correctly stated the law.

2. The decision below is in conflict both with the decisions of this Court, and those of almost every other circuit, with respect to the scope of review of a jury's verdict of guilty in a criminal case. It is settled law that the verdict of a jury in a criminal case must be sustained if there is substantial evidence, taking the view most favorable to the Government to support it. *Glasser* v. *United States,* 315 U. S. 60, 80; *United States* v. *Manton,* 107 F. 2d 834, 839 (C. A. 2), certiorari denied, 309 U. S. 664.[6] It is an improper interference with the jury's function for a court of appeals to reject the jury's theory of a case and accept another theory on the ground that it seems more credible. *United States* v. *Knight,* 336

[6] Accord: *Hardeman* v. *United States,* 163 F. 2d 21 (C. A. D. C.); *Yoffe* v. *United States,* 153 F. 2d 570, 572–573 (C. A. 1); *United States* v. *Valenti,* 134 F. 2d 362, 364 (C. A. 2), certiorari denied, 319 U. S. 761; *United States* v. *Reginelli,* 133 F. 2d 595, 598 (C. A. 3), certiorari denied, 318 U. S. 783; *Roberts* v. *United States,* 151 F. 2d 664, 665 (C. A. 5); *American Tobacco Company* v. *United States,* 147 F. 2d 93, 100 (C. A. 6), affirmed, 328 U. S. 781; *United States* v. *New York Great A. & P. Tea Co.,* 173 F. 2d 79, 81 (C. A. 7); *Gorin* v. *United States,* 111 F. 2d 712, 721 (C. A. 9), affirmed, 312 U. S. 19; *Scott* v. *United States,* 145 F. 2d 405, 408 (C. A. 10), certiorari denied, 323 U. S. 801.

U. S. 505; see *Stilson* v. *United States,* 250 U. S. 583, 588.[7] In setting aside the verdicts against the petitioners which had been upheld by the district court, the court below failed to follow this standard.

By considering and weighing the entire evidence—including that favorable to the respondents—the court assumed the jury's function of passing upon the credibility of witnesses and of choosing between conflicting versions of the facts. Thus respondents introduced evidence purporting to show that the same economic factors affected the pricing policies of the two dairies and expert testimony to the effect that in the case of a standardized product like milk virtual uniformity of price and practically simultaneous price changes might be expected (*supra,* pp. 6–7). Evidently on the basis of this evidence the court below stated that "the evidence is undisputed that every price change was made, not as the result of any understanding or agreement,

[7] This Court has been equally zealous in preserving the function of the jury in criminal and civil cases. *E. g.*, criminal: *Bozza* v. *United States*, 330 U. S. 160; *United States* v. *Bruno*, 329 U. S. 207; *Burton* v. *United States*, 202 U. S. 344, 373; *Crumpton* v. *United States*, 138 U. S. 361; civil: *Ellis* v. *Union Pacific R. Co.*, 329 U. S. 649, 653; and *Tennant* v. *Peoria & P. U. Ry. Co.*, 321 U. S. 29, 35. In the civil cases cited, the invasion of jury functions by appellate courts was stated as the reason for review by writ of certiorari.

but because of economic factors * * *" (R. 659).[8]

Again Gee, one of the sales representatives who participated in the price conferences which preceded the price changes, denied that any agreement as to prices was made by him (R. 256). This evidence was treated by the majority of the court below as establishing a fact (R. 659). The court failed to adhere to the cardinal rule that credibility is for the jury, which may well disbelieve denials of wrongdoing by interested witnesses.[9] The majority of the court below concluded that "Inferences which are contrary to established facts may not be drawn from mere

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[8] Even if it were proper for the appellate court to consider this somewhat speculative evidence, and even if it were given great weight, it would not destroy the inference from the conduct of the parties that prices were in fact established through concert of action. As the trial judge pointed out (79 F. Supp. at 18), if the price changes resulted both from economic factors *and* an unlawful combination the jury was authorized to render a verdict of guilty.

[9] A jury "does have the right and duty to judge the facts in the light of standards of human conduct, and to disregard that which appeals neither to reason nor experience." *Scott* v. *United States*, 145 F. 2d 405, 408 (C. A. 10), certiorari denied, 323 U. S. 801. It may believe or disbelieve testimony, although not contradicted by other direct testimony (7 Wigmore, *Evidence* (3d Ed., 1940) § 2034; *Aetna Life Ins. Co.* v. *Hagemyer*, 53 F. 2d 636, 637 (C. A. 5)), and it may accept part of the testimony of a witness and reject another part (*United States* v. *Reginelli*, 133 F. 2d 595, 598 (C. A. 3)). Nor is a jury compelled to believe testimony of innocence by a defendant-witness because called by the Government. 3 Wigmore, *Evidence* (3d Ed., 1940) § 897.

conjecture and an unwillingness to believe the unimpeached and uncontradicted testimony of witnesses" (R. 659–660). Thus the court weighed the evidence for itself, decided which parts of it resulted in "established facts" and which part was "mere conjecture." The inferences of price fixing from admitted price conferences followed by simultaneous price changes were evidently regarded as conjecture while the economic theories as to probable uniformity of prices of milk, and the denials of price fixing were accepted as established facts. It is difficult to conceive of a clearer case of invasion of the functions of the jury.[10]

[10] The court also asserted the dubious principle that circumstantial evidence must not only be consistent with the defendants' guilt but must be inconsistent with their innocence if it is to justify a verdict of guilty. We have no quarrel with the inclusion of this standard in the instructions to the jury in the instant cases (R. 619–620), although such an instruction has been held to be unnecessary where adequate instructions on the standard of reasonable doubt have been given. See Judge L. Hand in *United States* v. *Becker*, 62 F. 2d 1007, 1010 (C. A. 2). But there is no basis for the use of the rule as a justification for the substitution of the determination of an appellate court for that of the jury as to the proper inferences to be drawn from the evidence. As stated in *United States* v. *Valenti*, 134 F. 2d 362, 364 (C. A. 2), "It is the court's function to decide whether the evidence is competent to justify certain inferences; it is not the court's function to decide which of various inferences should be drawn. Nor is the jury to be limited to drawing only the inference most favorable to the accused." Accord: *Curley* v. *United States*, 160 F. 2d 229 (C. A. D. C.), certiorari denied, 331 U. S. 837; *Yoffe* v. *United States*, 153 F. 2d 570 (C. A. 1). Seemingly contra: *Nicola* v. *United States*, 72 F.

This Court has in the past granted certiorari in order to review civil cases (e. g., *Wilkerson* v. *McCarthy*, 336 U. S. 53, 55, and cases cited; *Carter* v. *Atlanta & St. Andrews Bay R. Co.*, No. 23, decided December 19, 1949) in which the appellate court has invaded the province of the jury, and administrative law cases (e. g., *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206), in which the appellate court has transgressed the bounds of judicial review. The maintenance of the jury's function in criminal cases is of equal importance.

3. Apart from its basic error of law in reweighing for itself the evidence favorable to the respondents against that which supported their conviction, the court below was influenced by at least two other misconceptions of law. In the first place the majority of the court of appeals treated the jury's verdicts of conviction as discredited by the verdicts of acquittal of other defendants. The court regarded the verdicts of the jury as of virtually no weight on the ground that the ac-

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2d 780 (C. A. 3); *Leslie* v. *United States*, 43 F. 2d 288 (C. A. 10).

It is significant that in the instant case the trial judge, who heard the evidence, was of the opinion that the evidence "is not as consistent with the innocence of the defendants as with their guilt. Taking the record as a whole we conclude the jury was justified, under the instructions, in finding that the facts evidencing conspiracy were consistent with the guilt of defendants and inconsistent with their innocence." 79 F. Supp. at 20.

quittal of the corporate officers "stripped the verdict of guilty as to the corporation defendants of all semblance of logic or reason, and to our minds weakened the presumption of correctness usually attributable to the verdict of a jury" (R. 661). Here, again, the decision below is in conflict with decisions of this Court. Even if the verdicts of acquittal and conviction were in fact hopelessly inconsistent,[11] that would not serve as a basis for setting aside the verdicts of conviction. Juries have the power to acquit illogically; their motives in so doing are completely immaterial.[12] A verdict of conviction of one defendant on one charge must be judged by whether it is supported by evidence—not by the consistency of the jury in dealing with other defendants or other charges. *United States* v. *Dotterweich,* 320 U. S. 277; *Dunn* v. *United States,* 284 U. S. 390; *American Medical Ass'n* v. *United States,* 130 F. 2d 233 (C. A. D. C.), affirmed, 317 U. S. 519; *United States* v. *General Motors Corp.,* 121 F. 2d 376 (C. A. 7), certiorari denied, 314 U. S. 618.

[11] Contrary to the assumption of the court of appeals, the jury here might rationally have concluded that the corporations conspired to fix prices through their sales representatives and at the same time have entertained a reasonable doubt as to the guilt of each of the individual officers charged. See opinion of district court, 79 F. Supp. at 18–19.

[12] Some of the reasons which may lead a jury to refuse to convict individuals are obvious. In the present case, as the district court pointed out (79 F. Supp. 19), there was a strong plea to the jury by counsel that conviction of the individuals would operate as a stain upon their reputations (R. 601–602).

The other misconception of law of the majority of the court below concerned the effect of the statute of limitations. The court regarded the period of the continuation of the conspiracy charged as having been broken by the three years of O. P. A. control.[13] It assumed that the usual three-year statute of limitations would bar conviction of charges based upon the evidence of the price conferences (all of which occurred during or before 1941), and that this evidence, if admissible at all, could "have but little bearing upon the course of conduct during the second period covered by the indictment" (R. 661). In fact, the statute of limitations was tolled during most of the war period (Act of Oct. 10, 1942, 56 Stat. 781), so that, as the district court correctly held (79 F. Supp. at 20), the pre-1941 acts could constitute part of the offense even on the theory that the continuity of conspiracy was broken in 1942, and the jury would have been justified in convicting on these acts alone.[14]

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[13] The trial judge instructed the jury to disregard price changes during this period (79 F. Supp. at 20).

[14] The court of appeals corrected the following sentence in its opinion (R. 660–661) by adding the italicized word:

"Whatever may have happened during this first period, being thus separated from what happened during the second period, would *ordinarily*, if charged as a separate offense, be barred by the three-year statute of limitations, and the evidence with reference to the conversations between these representatives, if admissible at all, could have but little bearing upon the course of conduct during the second period covered by the indictment."

4. The court of appeals also erred when it held that, in view of the fact that its decision required a new trial in this case, certain evidence admitted and a certain comment by Government counsel were prejudical to respondents. The evidence (Gov. Ex. 3, R. 81) showed, *inter alia,* ownership of defendant St. Louis Dairy Company by the National Dairy Products Corporation, and testimony as to salaries paid some of the individual defendants as officers of Pevely Dairy Company (R. 538–541). And Government counsel said, in his address to the jury, "* * * I presume there were dividends paid to the National Dairy Corporation" (R. 581).

The references to corporate ownership of a defendant could not, under the circumstances, have been prejudicial. Government Exhibit 3 was introduced only to show the names of the officers and directors of the St. Louis Dairy Company. Government counsel never characterized National as to size, location, or holdings. It was never suggested that any opprobrium attached to the name "National Dairy Products Corporation." The trial court was careful to instruct the jury to disregard extraneous matters in reaching its verdict with respect to the corporate defendants (R. 607, 614).

Government counsel's only reference to National in his closing argument bore upon defendants' contention that the price increases involved

in this case were necessitated by business losses. In the immediate context of this remark, counsel emphasized that the profit and loss problem was not material to the charge of restraint of trade (R. 580). The respondents did not object to any part of the closing argument. In such circumstances, far less moderate comment has been held unprejudicial. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 239–243. As this Court has remarked, if every minor departure from the strict standards of comment by counsel were to be held reversible error, few verdicts would stand. *Dunlop* v. *United States*, 165 U. S. 486, 498.

The evidence of salaries paid officers of Pevely Dairy Company was introduced solely to rebut defendants' contention that their prices were fixed by economic law, not by concert of action. Defendants introduced extensive evidence showing their accounting system, purporting to prove that correct business practices dictated the precise price revisions made at particular times. It then became proper for the Government to show allocations of cost within that system, to demonstrate that losses shown in defendants' evidence were caused by excessive and incorrect charging of administrative expenses rather than by market pressures. The trial court instructed the jury to consider this evidence on that problem only (R. 622–623). If we assume *arguendo* that the evidence

was not relevant, the only possible prejudice would have been to the individuals whose salaries were shown, all of whom were acquitted. In treating the above inconsequential matters as involving prejudicial error the court below has departed from the salutary rule laid down by this Court in *United States* v. *Johnson,* 319 U. S. 503, 519, which properly rests the final decision on minor matters of admissibility in the sound discretion of the trial judge.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writs of certiorari should be granted.

ARNOLD RAUM,
Acting Solicitor General.

FEBRUARY 1950.

U. S. GOVERNMENT PRINTING OFFICE: 1950